

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KATHLEEN HERMAN,
Plaintiff,

v.

THE MR. COOPER GROUP INC., doing
business as Nationstar Mortgage,
Defendant.

ORDER

22 CV 8952 (VB)

Copies Mailed/Faxed
Chambers of Vincent L. Briccetti

On February 20, 2023, defendant moved to dismiss the complaint for improper venue under Federal Rule of Civil Procedure 12(b)(3) and for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). (Doc. #9).

On February 21, 2023, the Court issued an Order setting plaintiff's deadline to oppose the motion as March 14, 2023. (Doc. #13).

On March 9, 2023, the Court received a letter from plaintiff, who is proceeding pro se, requesting a fifteen-day extension of her time to oppose the motion. (Doc. #16). Plaintiff noted defendant consented to her request.

On March 11, 2023, the Court granted plaintiff's request; her new time to oppose the motion was set as March 29, 2023. (Doc. #18).

On March 29, 2023, plaintiff filed an amended complaint. (Doc. #20). Her amended complaint notes that she is amending pursuant to Fed. R. Civ. P. 15(a)(1)(B) to correct "factual, time and pleading errors." (Id. at 1). Plaintiff also filed proof of service of the amended complaint on defendant. (Doc. #19).

On April 5, 2023, defendant filed a response to plaintiff's amended complaint and a reply in support of its motion to dismiss. (Doc. #21). In the response, defendant requests that the Court disregard plaintiff's amended complaint as untimely and improper, and, because defendant's view is that plaintiff failed to oppose the motion, grant its motion as unopposed. (Id. at 1).

Accordingly, it is hereby ORDERED that:

1. **The Court will consider plaintiff's amended complaint**, which the Court deems timely and properly filed based on plaintiff's March 29, 2023, deadline to respond to the motion. The Court does not appreciate defendant's overly technical arguments otherwise, particularly given that defendant consented to plaintiff's requested extension. And even if plaintiff's time to file an amended complaint "as a matter of course" under Rule 15(a)(1)(B) has expired, the Court grants plaintiff, who is proceeding pro se, leave to file the amended complaint pursuant to Rule 15(a)(2) because "justice so requires."

2. Defendant's motion to dismiss (Doc. #9) is DENIED WITHOUT PREJUDICE in light of plaintiff's amended complaint.
3. By **April 19, 2023**, defendant shall answer, move, or otherwise respond to the amended complaint.
4. If defendant moves to dismiss the amended complaint, plaintiff's opposition will be due **May 10, 2023**, and defendant's reply will be due **May 24, 2023**.

Chambers will mail a copy of this Order to plaintiff at the address on the docket.

The Clerk is instructed to terminate the pending motion. (Doc. #9).

Dated: April 6, 2023
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent Briccetti', written over a horizontal line.

Vincent L. Briccetti
United States District Judge